



NEVADA COMMISSION ON ETHICS EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION REGARDING JUST AND SUFFICIENT CAUSE

REQUEST FOR OPINION NO. 06 -7 1

SUBJECT: DAVID STIX, JR.
MAYOR
CITY OF FERNLEY

A. JURISDICTION:

In his capacity as Mayor of the City of Fernley, David Stix, Jr. is a public officer as defined by NRS 281.4365. As such, the Nevada Commission on Ethics has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion (complaint) 06-71, submitted by JudyAnn Bennett, received October 2006 (TAB B)
- Reviewed *Waiver of Statutory Time Requirement* and response submitted in November 2006 by the Fernley City Attorney's Office on behalf of Mayor Stix (TAB C)
- Reviewed the agendas and minutes of the following Fernley City Council meetings (agendas & excerpted minutes of the January 4, 18, and May 3 meetings – TAB D):
 - January 4, 2006;
 - January 18, 2006;
 - February 15, 2006;
 - March 1, 2006 & March 15, 2006;
 - April 5, 2006 & April 19, 2006;
 - May 3, 2006, May 15 & 16, 2006
- Reviewed the Fernley *City in Brief* newsletters published March 2006 through January 2007 (TAB E)
- Reviewed memorandum from Administrative Specialist Leslieann Hayden, city manager's office, dated January 12, 2007, regarding the Fernley *City in Brief* newsletters and other city communication initiatives described within a February 2006 *Administrative Communications Work Plan* (TAB F)

- Reviewed NRS 266.165 – 266.368 regarding the general powers and duties of mayor and city council (TAB G)

C. RECOMMENDATIONS:

Based on the results of investigation, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (2)
- NRS 281.481 (7)
- NRS 281.554

SPECIFIC REASON:

Sufficient credible evidence does not exist to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the provisions of NRS 281.481(2), NRS 281.481(7) and NRS 281.554.

D. SUMMARY OF REQUEST FOR OPINION (COMPLAINT):

The complaint, submitted by JudyAnn Bennett alleges violations of NRS 281.481(2), 281.481(7), and 281.554 by Mayor Stix at the time of the alleged conduct. The following is the substance of the complaint:

Candidates desiring to run for public office in the City of Fernley in 2006 were required to file for the office by May. Accordingly, Mayor Stix, filed for re-election.

Beginning in June 2006 and continuing monthly since then, the monthly city water and sewer bill mailings sent to all Fernley residents have included a newsletter called *City in Brief*. Each monthly newsletter contains a leading article “regarding” Mayor Stix entitled “Mayor’s Message”.

By publishing his messages in the *City in Brief* newsletter, Mayor Stix used public funds to help finance his campaign for re-election.

E. SUMMARY OF SUBJECT’S RESPONSE:

Mr. Stix submitted a *Waiver of Statutory Time Requirement* and his response through the City of Fernley Attorney’s Office. The following is the substance of his response:

In December 2005, the city manager hired Administrative Specialist Leslieann Hayden. She started her employment with the City in January 2006. Among her many responsibilities was the task of creating a citizen communication plan that included the *City in Brief* newsletter. The newsletter was her creation and was a means to inform the citizens of items of interest concerning the City of Fernley.

The first newsletter was released in mid-March 2006 and was designated the March/April issue. The first issue that was inserted in the water bills was the May issue. It announced the city's concert series for the summer. Subsequent newsletters were inserted into the monthly mailings of water/sewer bills to all City of Fernley residents. These newsletters were also sent by e-mail to those citizens and interested persons who had requested to be added to an electronic mailing list.

The *City in Brief* newsletters contain brief messages from the mayor on a number of topics of interest to the citizens. It is appropriate for the mayor to communicate with the citizens on a regular basis regarding recent developments such as road construction projects; citywide events such as the summer concert in the park series, parades, and festivals; and issues the city is addressing to improve the quality of life for the citizens such as graffiti removal and ordinances. The message from the mayor is only a small part of the overall newsletter. Leslieann Hayden assembles the remaining content of the newsletter with current topics of interest from various city departments.

The "Mayor's Message" column of the newsletter does not tout his personal accomplishments or activities. The column focuses on the bigger picture of the welfare and viability of the City of Fernley and its citizens. The city faces unprecedented growth and the problems and benefits associated with that growth. The mayor is responsible for keeping citizens informed on the issues affecting their city. The *City in Brief* newsletter inserted in city water/sewer bills, made available online, and e-mailed to subscribers is the most efficient and effective way to keep citizens informed.

The allegations of ethical violations committed by Mayor Stix are unsupported. The newsletter is but a small part of an overall plan to improve communication of items of interest to the citizens of the City of Fernley. The plan was instituted by the city manager with the hiring of Administrative Specialist Leslieann Hayden. Therefore, the complaint should be found to be without merit.

F. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

* * * * *

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.¹

(b) “Unwarranted” means without justification or adequate reason.

* * * * *

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

➤ If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

* * * * *

NRS 281.554 Public officer or employee prohibited from requesting or otherwise causing governmental entity to incur expense or make expenditure to support or oppose ballot question or candidate in certain circumstances.

1. Except as otherwise provided in subsections 4 and 5, a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:

(a) A ballot question.

(b) A candidate.

¹ NRS 281.501 (8) states: “... As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

2. For the purposes of paragraph (b) of subsection 1, an expense incurred or an expenditure made by a governmental entity shall be considered an expense incurred or an expenditure made in support of a candidate if:

(a) The expense is incurred or the expenditure is made for the creation or dissemination of a pamphlet, brochure, publication, advertisement or television programming that prominently features the activities of a current public officer of the governmental entity who is a candidate for a state, local or federal elective office; and

(b) The pamphlet, brochure, publication, advertisement or television programming described in paragraph (a) is created or disseminated during the period specified in subsection 3.

3. The period during which the provisions of subsection 2 apply to a particular governmental entity begins when a current public officer of that governmental entity files a declaration of candidacy or acceptance of candidacy and ends on the date of the general election, general city election or special election for the office for which the current public officer of the governmental entity is a candidate.

4. The provisions of this section do not prohibit the creation or dissemination of, or the appearance of a candidate in or on, as applicable, a pamphlet, brochure, publication, advertisement or television programming that:

(a) Is made available to the public on a regular basis and merely describes the functions of:

(1) The public office held by the public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed; or

(b) Is created or disseminated in the course of carrying out a duty of:

(1) The public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed.

5. The provisions of this section do not prohibit an expense or an expenditure incurred to create or disseminate a television program that provides a forum for discussion or debate regarding a ballot question, if persons both in support of and in opposition to the ballot question participate in the television program.

6. As used in this section:

(a) "Governmental entity" means:

(1) The government of this State;

(2) An agency of the government of this State;

(3) A political subdivision of this State; and

(4) An agency of a political subdivision of this State.

(b) "Pamphlet, brochure, publication, advertisement or television programming" includes, without limitation, a publication, a public service announcement and any programming on a television station created to provide community access to cable television. The term does not include:

(1) A press release issued to the media by a governmental entity; or

(2) The official website of a governmental entity.

(c) "Political subdivision" means a county, city or any other local government as defined in NRS 354.474.

(Added to NRS by 2003, 925)

G. RESULTS OF INVESTIGATION:

At the January 4, 2006, Fernley City Council meeting, City Manager Gary Bacock introduced then new Administrative Specialist, Leslieann Hayden. The meeting minutes state that Ms. Hayden will be the assistant to the city manager.

At the January 18, 2006, Fernley City Council meeting, Mr. Bacock proposed agenda item 11 to the council. The agenda item included the introduction and implementation of community outreach activities, including a newsletter. One city council member expressed reservations regarding the timing of the publication during an election year. Other comments were also noted in the following excerpted minutes of the meeting:

“City Manager Bacock thought the newsletter was a good opportunity to get out the city’s message to the public because, although the city paper did a good job of relaying city business, space was limited. The city would be able to send out more information about issues and events with a newsletter. Councilman Mortensen was concerned with the cost for postage to send a newsletter to every mailbox in Fernley. City Manager Bacock assured that his intent was to make the newsletter as efficient as possible and not mail newsletters to individual boxes. Copies would be available via fax, email, and the city’s official website; hardcopies would be available at city hall or local offices such as the library and justice court. Discussion followed regarding what would be included in the newsletter. The newsletter would be put together by the city’s new administrative specialist, Leslieann Hayden; the material would be pulled from various departments.

“Councilman Martin was in favor of informing the public but was against starting such a document in an election year as he thought that it could be viewed as propaganda.

“Councilman Chaffin thought that the newsletter seemed like a good way to get information out that was not carried in the local newspaper. He asked to keep the cost low and limit the number of paper copies.

“In regard to the newsletter, Mayor Stix had resisted the idea in the past. But if the city kept an eye on the cost, it could be done without added expense to residents. He thought the way it was being addressed (quarterly and without mass mailing) would be informational and beneficial. Mayor Stix acknowledged that the Leader-Courier’s only reporter for the area, Ms. Betty Aleck, did a great job of keeping up with all the local information, but the city needed an outlet for publishing full press releases and other items that may not fit into the local newspaper.

“Councilman Martin reiterated that he felt the newsletter was ill-timed as it was an election year. Mayor Stix assured the council that none of the topics in the newsletter would be geared toward campaign issues.

“Public comment was then opened. Mr. Bert McCoy, Planning Commissioner, thought the newsletter was a good idea and should be started soon. He thought the newsletter would create much needed interest within the community.

“Councilman Chaffin moved to approve and authorize staff to implement the newsletter format and timing, the logo policy and copyright application process and concert in the park series, without the cost of postage for the newsletter as identified in item 11. Councilman Jones seconded the motion. The motion carried as follows: Approved 5-0-0.”

All five city council members voted unanimously to approve the newsletter. The mayor had no vote in this instance.

At its May 3, 2006, meeting, City Manager Bacock informed the city council that the second edition of the city’s electronic newsletter would be sent out within the next couple of weeks. Anyone wanting to receive the newsletter via e-mail was encouraged to sign up with Administrative Specialist Leslieann Hayden.

During a telephone interview with Commission on Ethics staff, Ms. Hayden described the public relations and community development efforts that the City of Fernley is making through the use of a new website and other outreach tools. Ms. Hayden stated that she is the editor of the *City in Brief* newsletter. As such, she writes the articles, including the “Mayor’s Message” column. After Ms. Hayden compiles the newsletter, but prior to publication, the city manager and mayor conduct a final review of the articles. She further stated that there were instances when the mayor did not see the articles prior to publication. Ms. Hayden also stated that she was the one who decided to include the newsletter as an insert with the sewer/water bill mailings, beginning with the June 2006 mailing.

In a memorandum from Administrative Specialist Leslieann Hayden, city manager’s office, Ms. Hayden describes the process and procedures for publication of the Fernley *City in Brief* newsletters as well as other city communication initiatives as proposed within a February 2006 *Administrative Communications Work Plan* for the City of Fernley. Ms. Hayden explains that the city manager’s goals are to improve communication between the city and Fernley citizens. The city-wide news brief, *City in Brief*, is one way of doing that.

According to the records of the Nevada Secretary of State, Mr. Stix filed for re-election on May 1, 2006; however, he was not re-elected in the General Election held on November 7, 2006.

The *City in Brief* newsletter is continuing to be published by the city manager’s office under the newly elected mayor.

H. CONCLUSION:

Allegations regarding NRS 281.481(2):

The complaint appears to be based on the supposition that Mayor Stix personally and knowingly used his public office to prepare a newsletter to bolster his campaign efforts. A review of the newsletters does not reveal evidence of any effort to single out Mr. Stix for personal credit or benefit. Further, Administrative Specialist Leslieann Hayden stated that he did nothing other than review the articles before publication.

Allegations regarding NRS 281.481(7):

There is no credible evidence that Mayor Stix used governmental time, property, equipment or other facility to benefit his personal or financial interest. Ms. Hayden stated that she determined the content of the newsletter based upon the community outreach emphasis at a given point in time.

Allegations regarding NRS 281.554:

NRS 281.554 indicates that a public officer shall not cause a governmental entity to make an expenditure to support that public officer's candidacy for elective office if the expenditure:

- is made for the creation or dissemination of a publication that prominently features the activities of that public officer, and
- the publication is created or disseminated during the period beginning when the public officer files a declaration of candidacy or acceptance of candidacy and ending on the date of the general election.

This provision does not prohibit the creation or dissemination of such a publication:

- if the publication is made available to the public on a regular basis and merely describes the functions of the public office held by the public officer, or the governmental entity by which the public officer is employed, or
- is created or disseminated in the course of carrying out a duty of the public officer or the governmental entity by which the public officer is employed.

The *City in Brief* newsletters specifically feature a "Mayor's Message" column which touts the City of Fernley's progress, community development and accomplishments. Several of these newsletters were published regularly during the period that Mayor Stix had filed his candidacy for re-election.

NRS 266.190 indicates that the mayor has a duty to periodically give the city council information, in writing, relative to the state of the city ". . . and recommend such measures as he may deem beneficial to the city." The newsletter creates an avenue for the dissemination of information from the mayor to the city council and citizens, all of whom are stakeholders in the future of the City of Fernley.

The Executive Director finds that there is no credible evidence to substantiate a potential violation of NRS 281.554 by Mr. Stix. The publication of the newsletter is part of a strategy implemented by the city manager's office to improve communication between the City of Fernley and its citizenry. During the January 18, 2006, Fernley City Council meeting, the city council unanimously approved the funding of the publication of the newsletter. There is no evidence that Mr. Stix caused the city to make any expenditure to support his candidacy for mayor.

The Executive Director finds that there is no credible evidence to substantiate a potential violation of NRS 281.481(2), NRS 281.481(7), or NRS 281.554. Accordingly, the Executive Director recommends that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Stix, Jr., violated the provisions of NRS 281.481(2), NRS 281.481(7), or NRS 281.554.

Prepared by: Matt C. DiOrio DATED: January 30, 2007
MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: Pat Hearn DATED: 1/30/07
L. PATRICK HEARN
EXECUTIVE DIRECTOR